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**UNITED STATES DEPARTMENT OF AGRICULTURE**

**IN RE:                   Hearing on Guidelines for Solid Wood  
Packing Regulations**

Hearing held on the 23rd day of June, 2002  
  
                                  at 9:00 a.m.  
  
                                  Seattle, Washington

**TRANSCRIPT OF PROCEEDINGS**

**BEFORE:**   Richard Kelly, Hearing Officer

**OTHERS IN ATTENDANCE:**

Ray Nosbaum  
Christopher Klocek  
Linda Toran

1	INDEX
2	Direct Cross Redirect Recross
3	[None]
4	INDEX TO EXHIBITS
5	[None]

## P R O C E E D I N G S

June 23, 2003

MR. KELLY: Good morning and welcome to the Animal and Plant Health Inspection Service's public hearing on our proposed rule that would amend our Wood Import regulations to adopt an international standard entitled "Guidelines for Regulating Wood Packaging Material in International Trade." That international standard was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention, that's the IPPC, on March 15, 2002. That standard calls for wood packaging materials to be either heat treated or fumigated with methyl bromide, and marked with an approved international mark certifying treatment. We propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in wood packaging material used in global trade, and because current United States requirements for wood packaging materials are not fully effective. My name is Richard Kelly and I am a Regulatory Analyst for the U.S. Department of Agriculture's Animal and Plant health Inspection

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1       Service. I will be the presiding officer for today's  
2       hearing. Today's hearing in Seattle is the first of  
3       three public hearings that will be held on the proposed  
4       rule. The second hearing will be held in Long Beach on  
5       June 25 and the third hearing will be in Washington,  
6       D.C. on this coming Friday, the 27<sup>th</sup>. Notice of these  
7       public hearings was included in the proposed rule, which  
8       was published in the Federal Register on May 20, 2003.  
9       Copies of that proposed rule and of the IPPC Guidelines  
10      are available on the registration table. The purpose of  
11      today's public hearing is to give interested persons the  
12      opportunity for the oral presentation of data, or views,  
13      or arguments on the May 20 Proposed Rule. Those persons  
14      that are testifying today will have the opportunity to  
15      ask questions about the Proposed Rule. The APHIS  
16      personnel here will try to respond to clarify the  
17      provisions of the Proposed Rule if there's any confusion  
18      or misunderstanding about the meaning of different parts  
19      of the rule. However, we view this hearing as primarily  
20      an opportunity to receive public comments and not as an  
21      opportunity to debate the merits of the provisions of  
22      the rule. At this hearing any interested party may  
23      appear and be heard in person or through an attorney or

1 other representative. Persons who have registered  
2 beforehand either by e-mail or by phone or who  
3 registered this morning at the table in person will be  
4 given an opportunity to speak before unregistered  
5 persons are given the same opportunity. After all  
6 registered persons have been heard, anyone else in the  
7 audience who wishes to add remarks or comments or  
8 rebuttal is welcome to do so. The Federal Register  
9 notice stated that today's hearing is scheduled to start  
10 at 9:00 a.m. and conclude by 5:00 p.m. The next part of  
11 my prepared remarks said, if necessary I might limit the  
12 time of speakers to make sure we can close by 5:00 but  
13 obviously that will not be an issue today. In fact, I  
14 would estimate that we will be wrapped up before  
15 noontime based on the number of people in attendance  
16 here. All comments that are made here today are being  
17 recorded and will be transcribed. The Court reporter  
18 over here is making a taped record of the comments today  
19 and the written transcript of today's hearing will  
20 eventually be made available on our website. A copy of  
21 the hearing transcript will also be mailed out to anyone  
22 who requests it if you contact the address listed in the  
23 proposed rule. We hope to have a copy of the transcript

1 on our website within two or three weeks as well. A  
2 copy will also be available in our public meeting room,  
3 which some of you know is in downtown Washington, D.C.  
4 and has copies of all comments submitted on all of our  
5 rules including transcripts of public hearings we well  
6 as comments sent in by mail, or e-mail or whatever  
7 means. That room is in 1141 of the South Building in  
8 Washington, D.C. And is open from 8:00 a.m. until 4:30  
9 p.m. daily if anyone wants to visit and physically  
10 examine the comments we receive. As presiding officer,  
11 I will announce each registered speaker who has  
12 requested to make a statement. Before commencing your  
13 remarks, which I ask you to do from the microphone there  
14 in the middle of the room, please state and spell your  
15 last name for the benefit of the Court reporter so we  
16 get it accurately. In accordance with the procedures  
17 mentioned in the Proposed Rule and for the benefit of  
18 the Court reporter I am requesting that if anyone reads  
19 a prepared statement, when you are done reading it  
20 please give me a copy or preferably two copies if you  
21 have them and we will make sure the Court reporter has  
22 it to compare against the tape recording to get  
23 spellings and things like that correct. Any comments

1       made orally today or submitted in writing either today  
2       or any time prior to July 21, the close of the comment  
3       period, will become part of the public record for this  
4       hearing and for the proposed rule. Please try to direct  
5       your comments to the stated purpose of the hearing  
6       which, of course, is to consider comments on our  
7       proposed rule. If you speak about other topics or  
8       programs not related to this proposed rule they will go  
9       into the record but they really won't have any effect on  
10      what we are trying to do here today which is to receive  
11      comments on the proposed rule. I would like to remind  
12      everyone again that the close of the comment period for  
13      submitting comments is July 21. Any comments you want  
14      to submit in addition to today's hearing may be  
15      submitted by postal mail or by e-mail using the  
16      addresses listed on the first page of the Proposed Rule.  
17      Before I conclude my remarks, I would like to introduce  
18      the people from APHIS who are here with me today. Right  
19      to my left is Mr. Ray Nosbaum who for several years has  
20      been the program manager for this proposed rule and for  
21      APHIS' Solid Wood Packing Materials Project. Mr.  
22      Nosbaum shortly will provide an overview of the  
23      provisions of the Proposed Rule and its relationship to

1 other APHIS activities. And he will be available to  
2 answer any questions for clarification that you have  
3 concerning the meaning of the proposed rule or of terms  
4 used in it. Sitting next to Mr. Nosbaum is Mr.  
5 Christopher Kloczek, an APHIS economist who developed the  
6 economic analysis that was cited in the Proposed Rule's  
7 section entitled "Executive Order 12866 and the  
8 Regulatory Flexibility Act." Also here today is Ms.  
9 Linda Toran. Linda Toran, back at the registration  
10 table who is running the registration and who made all  
11 of the logistical arrangements for this series of public  
12 hearings. So after a short presentation next by Mr.  
13 Nosbaum I will call the first registered speaker. We  
14 have, at the moment, four speakers registered. After we  
15 hear from those speakers we will pole the audience and  
16 then invite anyone else who wants to make comments. And  
17 now we will go on to Ray's statement. Ray.

18 MR. NOSBAUM: Thank you. Good morning.  
19 Before I get started I just want to make sure everybody  
20 has a copy of both of the handouts because I'll  
21 reference them as I'm talking. First one, of course, is  
22 a copy of the Proposed Rule and the Federal Register.  
23 They are back at the table next to Linda. And then also



1 a copy of the IPPC standard. One other thing, just want  
2 to make a quick reference that any regulations that the  
3 Animal and Plant Health Inspection has on wood, logs, or  
4 unmanufactured wood are found in the 7<sup>th</sup> Code of Federal  
5 Regulations, subpart 319.40, if you wish to read the  
6 whole regulation. This is not the whole thing. It's  
7 about ten pages within this. The proposed rule and its  
8 related economic analysis are available on the PPQ  
9 website. That's the Plant Protection Quarantine  
10 website. If you want to know where that website is, if  
11 you look at your hand out of the proposed rule, on page  
12 27482 at the bottom of the first column is the website  
13 address. Okay. And the environmental analysis and the  
14 proposed rule can be accessed there. There has also  
15 been an environmental assessment made related to this.  
16 And there is also a website there. It's not in the  
17 proposed rule, but let me read it out to you. It's a  
18 little long. It's at [www.aphis.usda.gov/ppd/es/ppq/swpmdeis.pdf](http://www.aphis.usda.gov/ppd/es/ppq/swpmdeis.pdf).  
19 Okay. In my remarks I will give one, a quick review of  
20 regulatory history related to solid wood packing  
21 material. Second I will give a short description of the  
22 International Plant Protection Convention standard  
23 requirements. And then I'll give reasons why APHIS

1 believes adopting the international standard makes  
2 sense. And finally I will give feedback on a few  
3 frequently asked questions about the rule. First a  
4 quick review of rule making related to Solid Wood  
5 Packing Material by APHIS. Rule making began about 1990  
6 and resulted in a final rule in 1995. The requirements  
7 of this rule for solid wood packing material except for  
8 Canada and the northern states of Mexico is that solid  
9 wood packing material must be debarked. And if it is  
10 not debarked then it must be heat treated, fumigated, or  
11 chemically preserved. In all cases an importer's  
12 document is required to certify this solid wood packing  
13 material is either free of bark or properly treated. In  
14 1996 and 1998 the Asian longhorned beetle, a wood borer,  
15 was discovered in the New York and Chicago metropolitan  
16 areas. The Asian longhorned beetle is believed to have  
17 arrived on solid wood packing material from China. In  
18 November of 1998 we published in the Federal Register an  
19 interim rule requiring China and Hong Kong to treat at  
20 71 degrees celsius, maintaining that temperature at the  
21 core for 75 minutes or fumigation with methyl bromide  
22 using the methyl bromide schedule and the PPQ treatment  
23 manual. Or chemically preserving the solid wood packing

1 material. Additionally China and Hong Kong must provide  
2 a phytosanitary certificate that treatments were  
3 properly done. In 1998 rule making began to remove the  
4 northern states and Mexico from the exemption to debark  
5 or treat as required by the 1995 final rule. A risk  
6 analysis completed by the U.S. Forest Service identified  
7 the northern states of Mexico as a source of wood for  
8 logs, lumber, and solid wood packing material that are a  
9 pathway for quarantine pests. APHIS is completing a  
10 final rule requiring the northern states of Mexico to  
11 meet the regulatory requirements set out for the rest of  
12 the world. In 1998 APHIS published a notice of proposed  
13 rule making requesting public comment on possible  
14 alternatives for a proposed rule on importing solid wood  
15 packing material from anywhere in the world. In August  
16 of 2000 we published a draft baseline risk assessment  
17 for public comment. The draft baseline risk assessment  
18 gives the risk of introduction of exotic pests from  
19 solid wood packing material without treatment. These  
20 pests fall under five categories, bark beetles,  
21 defoliators, sap suckers, wood borers, and wood  
22 pathogens. In March of 2002, a new international  
23 standard entitled "Guidelines for Regulating Wood

1       Packaging Material in International Trade" was approved.  
2       APHIS proposes to adopt this international standard into  
3       the regulations on logs, lumber and unmanufactured wood.  
4       APHIS feels adopting the International Plant Protection  
5       Convention's standard, from now on I'm going to call  
6       that the IPPC for short, is a good strategy for  
7       providing needed phytosanitary measures to protect  
8       forests and agriculture. The treatments in the standard  
9       are effective in controlling bark beetles and wood  
10      borers, which are no 95 percent of the pests we  
11      intercept coming by solid wood packing material. The  
12      requirements of the IPPC standard are heat treatment at  
13      a core temperature of 56 degree4es celsius for 30  
14      minutes or fumigation with methyl bromide using the  
15      schedule in the IPPC standard. And where you'll see  
16      these specific requirements in the standard is if you  
17      look at your handout and you look at Annex I, which is  
18      on page 12. It will lists there the schedule for methyl  
19      bromide as well as the lists of pests that are the  
20      target of the standard. To verify proper treatments all  
21      solid wood packing material must be marked with the  
22      approved IPPC stamp indicating that the treatment was  
23      properly applied. The required treatments target pest

1 listed in the international standard. Ad if you're  
2 familiar, knowledgeable with those names they are bark  
3 beetles, wood borers, termites, and pinewood nematode.  
4 Again bark beetles and wood borers represent over 95  
5 percent of the exotic pests the U.S. intercepted on  
6 solid wood packing material in 2000 and 2001. The IPPC  
7 standard lists other potential treatments which require  
8 more studying. They are an extreme of the standard and  
9 they are listed there. As countries receive and provide  
10 verifiable published studies demonstrating the  
11 effectiveness of additional treatments they may be added  
12 as required treatments to the international standard on  
13 solid wood packing material. APHIS expects to  
14 participate in and monitor this process. If this  
15 process provides adequate phytosanitary protection for  
16 the United States APHIS may use the IPPC process for  
17 amending the international standard on solid wood  
18 packing material instead of pursuing independent and  
19 separate rule making. Why does APHIS believe it is  
20 important to adopt the IPPC standard? Among other  
21 reasons I would like to highlight interceptions of  
22 pests, research on treatment effectiveness and  
23 international trade requirements for equivalency and

1       harmony. I've already mentioned interceptions and would  
2       additionally refer you to the charts in your copy of the  
3       published proposed rule on page 27484 and 85. And those  
4       charts summarized are our data on the interceptions of  
5       pests into the United States. In particular you  
6       probably would be interested in the chart on page 27485.  
7       In 2000 and 2001 exotic bark beetles were found in New  
8       York and Pennsylvania. As well as Halifax, Nova Scotia,  
9       and Canada. Halifax is a source of trade arriving to  
10      the United States by rail. In July 2002, the emerald  
11      ash borer was identified in five counties of Michigan  
12      and Windsor, Ontario in Canada, which is across from  
13      Detroit, Michigan. The emerald ash borer is suspected  
14      of arriving on dunnage, a form of solid wood packing  
15      material, at least three years ago, maybe as many as  
16      five years ago. The emerald ash borer is also confirmed  
17      in northwestern Ohio. Also in July 2002 in Indiana  
18      inspectors found live and dead adult wood boring wasps  
19      in wooden containers originating in Spain. Finally  
20      earlier this year finds of an Asian bark beetle were  
21      confirmed in Colorado and Utah. In all cases solid wood  
22      packing material is suspected to be the pathway of entry  
23      for those exotic pests. APHIS believes the

1 effectiveness of the required IPPC treatments is  
2 supported by research. Besides the research cited in  
3 the preamble of the proposed rule, which we'll find  
4 listed on page 27488 in your hand out of the proposed  
5 rule. You can also find it at the website listed at the  
6 bottom, that I referred to earlier, at the bottom of the  
7 first column of the earlier page, is the location of the  
8 study that was used by the group that wrote this,  
9 drafted the standard. The IPPC is beginning  
10 collaboration with international organizations and  
11 documenting effectiveness of current required treatments  
12 on additional pests and additional treatments on all  
13 pests. The U.S. is involved in all of these efforts.  
14 Adopting the IPPC's standard would replace the  
15 requirements we placed on China and Hong Kong. This  
16 helps the U.S. meet international trade goals of  
17 equivalency because their regulations will apply  
18 similarly around the world. The Sanitary and  
19 Phytosanitary Agreement requires members of the World  
20 Trade Organization to treat trading partners similarly.  
21 The U.S. is a member of the World Trade Organization.  
22 Additionally adopting the IPPC standard helps the U.S.  
23 achieve harmonized phytosanitary measures with this its

1 major trading partners who are all signers of the IPPC  
2 and who are expected to adopt the IPPC standard. As  
3 contact for questions on the proposed rule published in  
4 the Federal Register on May 20, 2003, I receive calls  
5 asking me for clarifying information. These calls are  
6 not public comment and my responses are not official  
7 responses to comments. Here are a few of the most  
8 frequently asked questions. First, will the United  
9 States implement this rule in January 2004? The source  
10 of this data is a decision sheet signed in April of this  
11 year by the heads of the National Plant Protection  
12 Organizations of Canada, Mexico, and the United States  
13 of America. APHIS, Plant Protection and Quarantine is  
14 the National Plant Protection Organization for the U.S.  
15 The decision sheet states that it is the goal of all  
16 three countries to coordinate implementing the IPPC  
17 standard in all of North America on that date.  
18 Achieving this date is depending on completion of rule  
19 making in all three countries. Second, when will the  
20 rule go into effect? Given current information APHIS  
21 will phase in full implementation and enforcement of the  
22 regulations. We already notified the World Trade  
23 Organization of our intent to adopt the IPPC standard.



1 U. S. embassy agriculture trade officials were cabled so  
2 they can inform the National Plant Protection  
3 Organizations and exporters of other countries of the  
4 expected requirements to move solid wood packing  
5 material into the United States. Our current thinking  
6 is that for a while after the publication of the final  
7 rules some paper certification of treatments will be  
8 allowed. Noncompliance of solid wood packing material  
9 would be stopped and treated at the importer's cost. We  
10 expect to track frequent noncompliance sources and share  
11 information with Canada and Mexico. Inspections would  
12 especially target noncompliers. It is anticipated that  
13 a full enforcement noncompliance solid wood packing  
14 material would be rejected and civil penalties may be  
15 applied for fraudulent use of the approved IPPC mark.  
16 Third, will APHIS encourage use of substitute materials  
17 in its rule making? Synthetic and processed wood  
18 materials used to packing materials are not regulated by  
19 APHIS because we believe their manufacture already  
20 provides adequate protection against invasive species.  
21 Our regulations on wood are designed to make those  
22 packing materials made of solid wood adequately  
23 protected from pests. APHIS believes this provides a

1 range of safe packing materials. Businesses would make  
2 the choice for the best materials based on  
3 phytosanitary, environmental, and economic  
4 considerations. Fourth, what is the status of the IPPC  
5 approved mark? The original mark on the March 2002  
6 approved IPPC standard has been replaced. The standard  
7 is no longer suspended while the food and agriculture  
8 organization of the United Nations trademarked a  
9 replacement. You can see the new mark in the copies of  
10 the standard that is distributed to you. And if you  
11 turn to the second annex, and I also have an enlargement  
12 here of the mark. This is the new approved mark. It's  
13 also on the IPPC's website. And if you look at the last  
14 page of your handbook of the standard information about  
15 how to get to the websites there. Fifth, what would the  
16 U.S. export, what about U.S. exports involving solid  
17 wood packing material to other countries? When other  
18 countries adopt the IPPC standard by their own rule  
19 making U.S. exporters will be required to meet the  
20 requirements of those trading partners. The U.S. rule  
21 is an import rule and does not impose requirements on  
22 U.S. companies exporting to other countries. The rule  
23 imposes requirements on other countries importing into

1 the United States. APHIS PPQ is a National Plant  
2 Protection Organization for the U.S. as memorandums of  
3 understanding with two organizations to help all U.S.  
4 exporters to meet the requirements of other countries  
5 adopting the IPPC required treatments for solid wood  
6 packing material, and applying the approved IPPC mark.  
7 The American Lumber Standards Committee should be  
8 contacted on procedures for heat treatment. And their  
9 website is [www.alsc.org](http://www.alsc.org) or you can call them at 301-972-  
10 1700. For fumigation with methyl bromide contact the  
11 National Wood Pallet and Container Association. And  
12 their website is [www.palletcentral.com](http://www.palletcentral.com) or you can call them  
13 at 703-519-6104. In order to use the approved IPPC mark  
14 a U.S. exporter must follow these organizations'  
15 procedures. Thank you for your attendance and listening  
16 to my remarks.

17 MR. KELLY: Thank you Ray. We're going to  
18 move on to receiving your comments and feedback in just  
19 a moment. I have a list of four people who have  
20 registered to speak so far. I would ask if you have a  
21 prepared statement and you also have any questions you  
22 want to ask for clarification, if you would please read  
23 your statement into the record first and then at the end

1 of your statement if you have any questions you wish to  
2 address to Ray or myself then ask them at the end of  
3 your statement. The first registered speaker we have  
4 today is a Dr. Herbert Curl, Jr. And if you would come  
5 to the microphone in the middle of the aisle there.  
6 Thank you very much.

7 DR. CURL, JR.: Thank you for this opportunity  
8 to provide some testimony. My name is Dr. Herbert Curl,  
9 Jr. I am a member of and Science Advisor to the Seattle  
10 Audubon Society, and a board member of the Seattle Urban  
11 Nature Project. My testimony today regarding the  
12 proposed adoption of the International Plant Protection  
13 Convention as APHIS regulations relates to the fact that  
14 the Convention is inadequate and not even universally  
15 observed. They are not sufficiently protective of our  
16 private and public forest nor of agriculture crops and  
17 private, domestic plantings. Over \$130 billion of  
18 damage are already done annually by invasive species.  
19 The potential for loss of our western national forests  
20 due to Sudden Oak Death is very real. The Convention  
21 guidelines have several flaws, in my estimation. They  
22 allow the use of solid wood in pallets and crates as  
23 opposed to manufactured products such as metal, plastic,

1 fiberglass, particleboard, et cetera. Manufactured  
2 products can be reused and recycled and drastically  
3 reduce the chances of importing forest pests. Moreover  
4 there is the likelihood that engineered packing products  
5 can provide increased efficiencies in handling and  
6 transportation. There has been no, the second problem  
7 is that there is no cost benefits analysis of the use of  
8 manufactured products including the benefits of  
9 excluding forest pests, reduced waste, and improved  
10 handling procedures. Thirdly, the proposed use of  
11 methyl bromide would further damage the stratospheric  
12 ozone layer and is potentially dangers to dock workers.  
13 Fourth, APHIS mandates more stringent treatments in its  
14 1998 rule for Chinese solid wood packing material.  
15 APHIS says it cannot apply these safeguards to wood  
16 packaging from all trade partners because it lacks  
17 conclusive scientific evidence that the treatments would  
18 be more effective than the IPPC treatments. Lack of  
19 evidence as an excuse ignores the precautionary  
20 principle in this case. Imports from any tropical or  
21 semitropical country are likely to harbor forest and  
22 agriculture pests. APHIS conceded in the draft  
23 Environmental Impact Statement that use of packaging

1       manufactured from alternative materials would be much  
2       more effective in preventing introductions of forest  
3       pests than is either the IPPC standard or the  
4       regulations governing Chinese solid wood packing  
5       material. Improved regulations need to be applied to  
6       Mexico in separate rule making to prevent the  
7       importation of untreated wood. At the very least Mexico  
8       can be required to use kiln-dried lumber. There is no  
9       indication that improved guidelines and regulations will  
10      be coordinated with other trading partners such as  
11      Canada, although I believe that was addressed in your  
12      presentation, Mr. Nosbaum. Finally I urge you to take  
13      the opportunity under new Homeland Security measures  
14      using computerized bills of lading to inspect and  
15      quarantine containers with nursery stock and other  
16      living material quite apart from packaging material  
17      used. Thank you very much.

18               MR. KELLY: Thank you for your thoughtful  
19      comments, Dr. Curl. The next speaker we have registered  
20      is Jo or Joanne Roberts.

21               MS. ROBERTS: Good morning and thank you for  
22      coming all the way to listen to our concerns. I  
23      represent the Washington Environmental Council, an

1 organization of thousands of individuals and  
2 organizational members throughout the state of  
3 Washington. Last year I heard Dr. Jerry Franklin, who  
4 is Professor of Forestry at the University of  
5 Washington, say that the greatest threat to our  
6 northwest forests is pathological invasive species.  
7 This immediately flashed me back to my childhood in  
8 Pennsylvania with the loss of the American Chestnut and  
9 the American Elm. It was a deeply personal experience  
10 to all of us. And severe economic blow to eastern  
11 United States. Since then I have fought White Pine  
12 Blister Rust at my cabin in northern Minnesota and saved  
13 my White Pines. I have hauled 25 truckloads of ivy out  
14 of my backyard here in Seattle and am rewarded by drifts  
15 of pink bleeding heart coming up afterwards. I have  
16 learned that something can be done to prevent  
17 catastrophes if we act quickly. Halting the  
18 introduction of forest insects by way of the pathway of  
19 wood packaging is one of those areas where something can  
20 and must be done. Closing this pathway is very  
21 important to our forest and economic health. As such,  
22 the Washington Environmental Council supports the fifth  
23 alternative in the draft of Environmental Impact

1 Statement, which prohibits packaging made from solid  
2 wood and allows for packaging made from alternative  
3 materials. The fifth alternative provides the fewest  
4 environmental impacts, the best protection against  
5 introduced forest pests, and the best protection to our  
6 economy from the introduction of invasive pests that can  
7 destroy our forests. Solid wood packaging alternative  
8 materials include processed wood like fiberboard and  
9 particleboard, plastic, metal, fiberglass, and more.  
10 And the most important aspect of this alternative is  
11 that crates, pallets, and other packaging made from  
12 these alternative materials will not harbor forest  
13 pests. They will be easy to verify as being in  
14 compliance. And will not necessitate use of  
15 environmentally damaging fumigants such as methyl  
16 bromide. We would like to bring your attention to the  
17 more thorough analysis prepared and submitted by Dr.  
18 Faith Campbell of American Lands Alliance. We believe  
19 the points raised by this analysis should be given  
20 serious consideration. Thank you for considering my  
21 testimony. And I have a question. That is, how can we  
22 be assured that the markers required, that designate the  
23 treatment has actually, has happened, have actually, has



1       the treatment actually happened? Has it been carried  
2       out? And is it effective?

3               MR. KELLY: Thank you very much for your  
4       statement and we'll try to give as good a response to  
5       your question as we can. In an earlier point of your  
6       statement, by the way, I remark that Dr. Faith Campbell  
7       is scheduled to speak at our Washington, D.C. Public  
8       Hearing this Friday. And we will certainly take any  
9       comments submitted by her and her organization into  
10      consideration. In terms of the application of the mark  
11      and the confidence in the mark, I will ask Ray to  
12      address this in some detail. But to put it very  
13      briefly, there will be arrangements in the country in  
14      which the treatment occurs and the mark is applied.  
15      There will be national organizations there monitoring  
16      the effectiveness of the treatment and the proper use of  
17      the mark and guarding against fraudulent use of the mark  
18      in the country where the treatment occurs and the mark  
19      is placed. And then at this end in the United States,  
20      we'll also, of course, be conducting enforcement  
21      activities to be on the lookout for fraudulent use of  
22      the mark or for use of the mark when the treatment was  
23      not fully effective. So the short answer is that the

1       IPPC's guidelines themselves set up a framework where  
2       national organizations of the government of the country  
3       where the treatment occurs have to set up procedures for  
4       the auditing and monitoring and enforcement of the  
5       proper use of the mark. And APHIS, on its own  
6       authority, will be working backwards when we accept the  
7       mark at ports here we will be taking enforcement of  
8       activities to track down improper use. Let me put Ray  
9       on though because he knows much more about this than I  
10      do.

11               MR. NOSBAUM: Thank you for your question.  
12      Let me address this as best I can. Let me just repeat  
13      the question. How can we be assured the proper  
14      treatment has been applied? Is that correct?

15               MS. ROBERTS: Yes.

16               MR. NOSBAUM. Okay. We did do some research  
17      of what was the impact of our regulation on China and  
18      Hong Kong. And we looked at what was the rate of  
19      compliance that we found. And since many people did  
20      have questions and still do have questions about China's  
21      ability to meet those requirements we found that their  
22      rate of compliance was around 98, 99 percent. So we  
23      felt that we were very positive about that. This also

1       went with beginning aggressive inspection. And I think  
2       there will be, as I mentioned earlier, targeted  
3       inspections of those countries that send us the most  
4       noncompliant wood. The other thing I want to mention is  
5       that the IPPC standard and let me just make sure I,  
6       right in the standard there is a requirement for the  
7       exporting National Plant Protection Organization of each  
8       country to set up a certification program. And you can  
9       find that, well, I'm sorry, I can't see it right now.  
10      But it's either in five or six of the standard. And  
11      what it requires is each National Plant Protection  
12      Organization of each country set up certifying programs  
13      to make sure that the treatments are properly applied so  
14      that the IPPC standard is used legally and not  
15      fraudulently. I already explained that in our country  
16      we have memorandums of understanding with two  
17      organizations to make sure that that is properly done.  
18      We have been in conversations with other countries,  
19      major trading partners who over the next year or so also  
20      plant to adopt the IPPC standard about their process.  
21      And each country is going to go about it the way that  
22      fits their culture and their legal standing. I can't  
23      promise to you that we will always be able to be sure

1       that everything is verifiable. But from what I am  
2       seeing is that we can be assured that almost all will be  
3       very much of verifiably compliant wood. There's just  
4       never the possibility of being 100 percent sure. Also  
5       the penalties that would be derived from having  
6       noncompliant wood are pretty stiff. If something  
7       arrives, a product arrives in solid wood packing  
8       material and the solid wood packing material is found to  
9       be noncompliant that shipment is halted. And if in the  
10      beginning, as I described, we do have treatment at ports  
11      it would be at the importers cost. And ultimately there  
12      would be penalties, either they may be in the form of  
13      suing for fraudulent use of the mark. And that would,  
14      for example, would be is if you put the mark on and then  
15      the wood is found to be noncompliant. That would be a  
16      fraudulent use of the mark. And that may be applied.  
17      Additionally, at full compliance, we're expecting that  
18      we're going to reject that shipment which could either  
19      be turning it around or destroying the solid wood  
20      packing material which would require the shipper to put  
21      that product on complying solid wood packing material.  
22      And giving the understandings of our procedures at this  
23      time when we would, if in the beginning during the early

1 part of compliance if we were to treat that wood we  
2 would not mark it because we're just trying to allow the  
3 shipment to get out of the port. That means that that  
4 wood is still noncompliant with the standards. So once  
5 it moves from that location where it arrives it would  
6 have to be properly treated and marked. So that would  
7 have to be at the cost of the importer. So, given our  
8 current understanding of how things might work, it would  
9 seem that the penalties are pretty high to a shipper who  
10 would choose not to comply with the standard. Any back  
11 up question to my response?

12 MR. KELLY: Thank you, Ray. Okay. We will  
13 move on to our next speaker now. And again I'd ask if  
14 you have a statement and questions, as the last speaker  
15 did, please save your questions until the end of your  
16 statement and we'll try to answer them. I am not sure  
17 if Kristin Finkbeiner is here yet this morning. She had  
18 registered but I did not notice her checking in. Okay.  
19 Very well, then we'll move her down the list. Our next  
20 speaker would be Mr. Joe Scott. Are you here today,  
21 sir? He is listed as representing, he is the  
22 International Conservation Director of the Northwest  
23 Ecosystem Alliance is what I have here. Anyone else

1 from that organization here? Well, that's interesting.  
2 What I am going to do now since we had two people who  
3 registered as interested in speaking, who don't seem to  
4 be here yet, I'm going to go on and call the audience  
5 for anyone else who wants to make a comment or ask a  
6 question and so on. And after that we will take a break  
7 and I will reconvene after ten or 15 minutes in hopes  
8 that our missing speakers will have turned up by then.  
9 Would anyone else like to make a statement? Yes, sir.  
10 If you would stand up and give your name and spell your  
11 last name, please.

12 MR. GARCIA: I am Ignacio Garcia. Last name  
13 is spelled G-a-r-c-i-a. I represent the Association of  
14 Woodworking Industries of Spain. Our companies  
15 manufacture all kinds of wooden crates, just pallets or  
16 crates or packaging. Our companies are affected by this  
17 rule and I wanted to ask two things for, just for  
18 clarification of the rule. The first one is in the rule  
19 it is said that wood packaging materials such as veneer,  
20 peeler cores, sawdust, wood, wool, and shavings and wood  
21 cut into thin pieces may not be pathways for  
22 introduction of quarantine pests. I -- unless  
23 technically justified. My question is what do you

1 understand by thin pieces? Is there any maximum for  
2 pieces made of wood that are not affected by this rule  
3 or all kind of pieces made of solid wood are affected?

4 MR. KELLY: Could I ask, sir, that you tell us  
5 what page number you're reading that quotation from so  
6 that we can refer to it?

7 MR. GARCIA: It's page 27482, second column,  
8 referring to IPPC Guidelines.

9 MR. KELLY: I see. Thank you. Continue  
10 please.

11 MR. GARCIA: This is the first question. And  
12 the second question is about the mark. You said that  
13 the IPPC mark is this one. This is the same one that  
14 you are going to request for the packaging? Is the same  
15 one that U.S. government is going to request?

16 MR. KELLY: I can answer that right now. Yes,  
17 sir, we will be using the IPPC mark.

18 MR. GARCIA: Okay.

19 MR. KELLY: And I should qualify that. That  
20 is our plan right now. In the final rule it's assuming  
21 that the final rule is finalized and we do require what  
22 we've been requiring. We would certainly go with the  
23 IPPC mark because the whole point of adopting the IPPC

1 guidelines is to achieve international consistency with  
2 a mark that is recognizable by all plant protection  
3 authorities worldwide. So, yes.

4 MR. GARCIA: Thank you.

5 MR. KELLY: And then we will get back to your  
6 first question about the definition in the IPPC  
7 Guidelines. Wood packaging material defined as wood or  
8 wood products excluding paper products used in  
9 supporting, protecting, or carrying a commodity. And it  
10 includes dunnage. Then you specifically went on to the  
11 size of pieces of wood. Just a moment please, while I  
12 find it. The quotation that you read that was relevant  
13 was wood packaging material such as veneer, peeler,  
14 cores, sawdust, wood, wool, and shavings and raw wood  
15 cut into thin pieces may not be pathways for  
16 introduction of quarantine pests and should not be  
17 regulated unless technically justified. And if I  
18 understand your question correctly, it was regarding  
19 just how small pieces of wood have to be cut before they  
20 are not considered solid wood packing materials. Okay.  
21 I'm going to put Ray on this one because he's the expert  
22 in this area and I'm not.

23 MR. NOSBAUM: Sir, specifically when you ask



1       about how thin are you talking about the strippers that  
2       are sometimes used to separate pallets from each other  
3       or are you referencing that...

4               MR. GARCIA: Pieces of solid wood. One piece  
5       is in the pieces out of 50...

6               MR. NOSBAUM: Okay. Well, the situation is,  
7       if you're talking about things that are about the size  
8       of those strippers they would not be covered by the  
9       rule. Because cutting them into those thin strips, in  
10      the cases of the targeted pest for the IPPC standard  
11      those kinds of pests would not be able to survive in a  
12      strip that thin. Now, I'm not referring to those pests  
13      that are not targeted currently by the IPPC standard.  
14      That's for further study. And hopefully we'll have  
15      documented studies that can verify what treatments of  
16      what processes can be used. Those strippers might be  
17      included at that time. For right now, cutting them into  
18      those thin strips for a wood bore or a bark beetle, also  
19      those strippers are also there frequently during the  
20      fumigation or the treatment process. So they would end  
21      up being treated anyway.

22              MR. GARCIA: If that like a quarter inch or if  
23      that a half inch?

1                   MR. NOSBAUM: It's just enough to allow air to  
2 pass in between the pallets during the treatment  
3 process.

4                   MR. KELLY: Like a quarter inch.

5                   MR. NOSBAUM: Yeah. Can't be exact but I  
6 think that's a good estimate.

7                   MR. KELLY: Thank you, Ray. And to wrap that  
8 out and correct me if I misquote you, Ray. That would  
9 be that under our current definition of wood packaging  
10 materials or solid wood packing materials that thin  
11 pieces of wood such as stripers and other pieces of wood  
12 of that size would not be regulated because they would  
13 not meet the definition of solid wood packing materials.  
14 Without projecting anything let me just comment that  
15 this is the sort of fine distinction that could generate  
16 more definitions or more rule making in the future as,  
17 if it becomes an issue at the ports. And there is  
18 differences of opinion as to what exactly is a small  
19 piece of wood such as a stripper. That could be the  
20 sort of thing that would have us promulgate more  
21 specific definitions in the future if we determine that  
22 it becomes an issue operationally during inspections of  
23 imports. I'm not projecting that's going to happen but

1 I am just suggesting that it's these areas where there  
2 is honest defensive opinion as to what terms mean that  
3 can lead to more clarifying rule making in the future  
4 where we establish more specific definitions. Ray is  
5 making the point that if anyone has an opinion on how we  
6 could clarify this right now between the proposed and  
7 the final rule stage and put in a specific definition of  
8 the final rule, for instance, of what size small pieces  
9 of wood to excludes from regulation we would be happy to  
10 receive comments on that subject. If someone now wants  
11 to argue for setting a limit of half an inch or quarter  
12 of an inch or three quarters of an inch in each  
13 dimension or however you want to phrase it we would be  
14 happy to hear specific suggestions for where the cut off  
15 should be for excluding small pieces of wood from the  
16 requirement for treatment. Thank you, sir. Any other  
17 comments from the audience or questions from the  
18 audience? Sir, if you'd please give your name and then...

19 MR. RADFORD: My name is Robert Radford, R-a-  
20 d-f-o-r-d. I represent Ocean Spray Cranberries, a fruit  
21 processing company. We notice that Canada will be  
22 exempt from these rules. If so we want to mention that  
23 we do use solid wood packing materials made of U.S. and

1 Canadian origin. But they are not marked as such.  
2 Therefore we are looking for clear and precise  
3 instructions on how we would prove compliance with this  
4 new legislation through the exemption of U.S. and  
5 Canadian wood to insure that no shipments are held at  
6 the border and sent back to Canada. Because totes or  
7 bins are not properly marked. Final regulations must  
8 provide guidance for this issue to protect us from  
9 having shipments stopped at the border and sent back to  
10 Canada. If we are required to treat and mark these bins  
11 the cost would be harmful both to our U.S. and Canadian  
12 cranberry growers to the total of approximately  
13 \$200,000. We'd also be operationally intrusive and time  
14 consuming to organize fumigation for nearly 90,000  
15 wooded totes and bins. The proposed regulations spoke  
16 mostly to traditional pallets and didn't really count  
17 for the many other solid wood packing material devices  
18 such as bins and totes used in the product industry.  
19 The final regulation will have to consider the time  
20 required to accomplish fumigation if it becomes required  
21 of the current inventory such as bins and totes such as  
22 ours that have a longer life cycle and traditional  
23 pallets. The other comment, among the message for

1 treatment I would urge APHIS to consider freezing. We  
2 currently freeze these tote bins in commercial freezers  
3 at zero degrees fahrenheit for up to six weeks. So we'd  
4 like that to be considered as a treatment as well.  
5 Thank you.

6 MR. RADFORD: If I could just ask my own  
7 clarifying question. Were you referring to your use of  
8 bins and pallets strictly between the U.S. and Canada  
9 and back again?

10 MR. RADFORD: That's right. Correct.

11 MR. KELLY: Thank you. I'm going to ask Ray  
12 to address this issue just a little.

13 MR. NOSBAUM: Thanks for your question.  
14 Actually this was a question that I received from a  
15 representative of Ocean Spray over the telephone a  
16 couple of times. I'm not going to be able to give you  
17 clear, concise instructions. What I can tell you is  
18 that, yes, the wood manufactured in Canada and United  
19 States that goes back and forth across the border is  
20 exempt from the rule. You do not need to treat or mark  
21 that wood. You observe that the wood of those crates,  
22 those totes and bins are not marked as being of U.S. or  
23 Canadian origin. All I can tell you right now is that

1 as we foresee the implementation of the standard, if it  
2 does go final, is that for a while that will not become  
3 an issue until all solid wood packing material comes  
4 into compliance with the mark. Implementation  
5 procedures in some areas are still being worked out.  
6 Certainly there is, we're going to be looking very  
7 carefully at ways to make sure that trade is not  
8 stopped. So I think you can be assured that our goals  
9 are going to try to achieve free movement of things. As  
10 to your question about freezing, right now we have no  
11 documentation, scientific documentation that indicates  
12 that freezing at any temperature necessarily addresses  
13 the efficient vital sanitary measures we need. But then  
14 again remember I mentioned that various options are  
15 listed in Annex III of the standard and they are not an  
16 inclusive list. So. If you have scientific  
17 documentation please provide it in your comments or at  
18 any time that you might have it so that it can be  
19 brought forward to the international community for  
20 consideration. But right now we don't have the  
21 verifiable evidence that those treatments are effective.

22 MR. KELLY: Thank you, Ray. I would just add  
23 for regard to your case in particular, and any industry

1 concerns in general that we always welcome comments that  
2 suggest what are feasible approaches for particular  
3 industries. So, if you have thoughts on what you could  
4 do realistically and within the bounds of your cost  
5 limits to help with identifying your particular SWPF as  
6 being of U.S. or Canadian origin and just moving back  
7 and forth between those two countries. If you have any  
8 thoughts on ways that the material could be marked or  
9 certified or documented or something else in order to  
10 make, in order to give us confidence about it's origin  
11 as it passes over the border, please write us a note.  
12 Submit it as a comment on this proposed rule. And be as  
13 specific as you can about what you think would be a way  
14 to do that. We are always open to specific suggestions  
15 for how to achieve the goals that we need to get to. And  
16 that goes for any other particular business situation.  
17 The more detailed you can be about what does and does  
18 not work for your industry, the better final rule we can  
19 get to. It's, sometimes these hearings become too much  
20 of a case of wait and see what the government proposes  
21 and then try to live with it, when, in fact, we really  
22 want to make it more interactive than that. We would  
23 love to get specific suggestions on what is realistic

1 and feasible. That, I am going to ask once more. I  
2 didn't see anyone come in. But if Kristin Finkbeiner or  
3 Joe Scott have arrived and are ready to speak I'd invite  
4 them to do so. If not I will ask one more time for  
5 anyone who wants to make a comment. We will then  
6 adjourn for 15 minutes and reassemble briefly, frankly  
7 the only thing that will happen after that reassembly is  
8 I will ask once more if there are any more speakers and  
9 we will then adjourn for the day. I just want to give  
10 the two folks who don't seem to have arrived yet one  
11 more chance to come and give their comments. So anymore  
12 comments at this point from anyone? Very well. It's  
13 just about 10:00. We will reconvene if you are  
14 interested in come back at 10:15 and I will ask once  
15 more for any comments. Thank you.

16 \*\*\*

17 [Off the record]

18 [On the record]

19 \*\*\*

20 MR. KELLY: Thanks for your patience everyone.  
21 We are reopening this public hearing at 10:20. Again  
22 I'm Richard Kelly, the Hearing Officer. And we this  
23 morning went through the list of speakers. And after



1       our break we're not going to continue. Our next speaker  
2       will be Kristin Rowe-Finkbeiner. And I'd ask you to  
3       come to the microphone and read your statement. If you  
4       have any questions to ask us about the rule or  
5       clarifying the meaning of the rule, if you would ask  
6       those at the end of your statement we will try to  
7       respond. Thank you.

8               MS. ROWE-FINKBEINER: As you know my name is  
9       Kristin Rowe-Finkbeiner and I represent the Lands  
10      Counsel and eastern Washington organization with  
11      thousands of members statewide. Thank you for taking  
12      the time to hear my testimony today on the USDA APHIS  
13      Importation of Solid Wood Packing Material Draft EIS.  
14      Halting the introduction of forest insects via the  
15      pathway of wood packaging is very important and although  
16      the guidelines adopted by the International Plant  
17      Protection Convention represent an important improvement  
18      over current situations, those guidelines are not the  
19      most effective way to protect our regional forest and  
20      economic health. Invasive species have been estimated  
21      by a Cornell University study to cost the United States  
22      \$137 billion per year and are one of the top two reasons  
23      for biodiversity loss. Habitat fragmentation is the

1       other. As adopting the IPPC Guidelines were chosen by  
2       the agency as the preferred alternative, I'd like to  
3       take a moment to note some concerns with that decision.  
4       As well as note a preference for the fifth alternative.  
5       The IPPC Guidelines are not sufficiently effective to  
6       protect North America's invaluable forests, and they  
7       will result in a major increase in the use of the  
8       fumigant methyl bromide, which damages the stratospheric  
9       ozone layer and threatens workers' health. We propose  
10      that of the five alternatives noted in the DEIS the  
11      fifth alternative which prohibits packaging made from  
12      solid wood and allows from packaging made from  
13      alternative materials will serve best as the preferred  
14      agency alternative. It provides the fewest  
15      environmental impacts as well as the best protection  
16      against introduced forest pests. In advance notes of  
17      proposed rule making published January 20, 1999, APHIS's  
18      third option was to "prohibit the importation of solid  
19      wood packaging material in any form," this is a quote by  
20      the way, "and from any country." This document appears  
21      to support adopting the current option five as the  
22      preferred alternative. In this document APHIS said,  
23      "The advantages of this option are that it would provide

1 the greatest protection against pest risk and could  
2 eventually result in decreased use of methyl bromide. A  
3 disadvantage of this option is that it could have an  
4 undesirable effect on international trade. This effect  
5 could be mitigated by a phase-in period to allow  
6 shippers to adjust to the prohibition and during this  
7 time heat treatment, treatment with preservatives,  
8 fumigation, or other effective alternative treatments  
9 could be required before solid wood packaging materials  
10 could be imported." We'd like to note that there are  
11 many options for alternatives to solid wood packaging  
12 materials. It includes fiberboards and particleboards,  
13 metal, plastic, fiberglass, and much more. Crates,  
14 pallets and other packaging made from these alternative  
15 materials will not harbor forest pests, will be easy to  
16 verify as being in compliance, and will not necessitate  
17 the use of environmentally damaging fumigants such as  
18 methyl bromide. Requiring shippers to phase in a  
19 conversion to packaging made from alternative materials  
20 is the only strategy that achieves all three national  
21 goals at stake in this rule making. Accommodating the  
22 rising trade volumes, protecting forests from exotic  
23 pests, and protecting the stratospheric ozone layer.

1 Thank you for your time and for considering my  
2 testimony.

3 MR. KELLY: Thank you very much for your  
4 remarks. Let me poll the audience once more and see if  
5 there anyone else who wants to make further comments or  
6 ask any clarifying questions about our proposed rule.  
7 Did you, Kristin, did you have any questions? Well,  
8 then let me just take 30 more seconds of your time to  
9 remind everyone that the proposed rule is open for  
10 comment until July 21. And if you have any further  
11 thoughts on the matter you can submit them by postal  
12 mail or e-mail following the instructions in the  
13 proposed rule. And we also have on our website, as Ray  
14 mentioned earlier, if you look in the proposed rule  
15 you'll see several web addresses and those leading to  
16 things such as the environmental analysis, the  
17 supporting economic analysis, clicks to the IPPC  
18 Guidelines and so on. That's all available on the web.  
19 We will also be adding a transcript of this hearing and  
20 the other two hearings later this week to our website as  
21 soon as we get the transcripts which will be a couple of  
22 weeks from now. The other thing on our website if  
23 you're interested in who else is commenting on this rule

1 we keep a list that we update each day just of the names  
2 and organizations of people who submit comments on the  
3 rule. If you are interested in that, that's also  
4 available on the web. The full text of comments,  
5 unfortunately, is not available on the web except for  
6 the transcripts of these hearings. But the comments we  
7 get in the mail, if you want to see what's in them you'd  
8 have to make arrangements or visit our meeting room down  
9 in Washington, D.C. The good news is APHIS is moving  
10 towards a system within the next year where the full  
11 text of all comments on all of our rules will, in fact,  
12 be available on the web. And since I'm sort of managing  
13 that project I just want to do a little PR for it and  
14 say that if we go through something like this again next  
15 year you'll have a much easier time seeing what other  
16 commentors have said. Then if there are no further  
17 questions or comments then I will declare this hearing  
18 closed and I think you all very much for coming and  
19 sharing your insights and comments with us today. This  
20 hearing is now adjourned at 10:29 a.m.

21 \*\*\*  
22

## 1 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER

2  
3  
4 IN RE: Hearing on Guidelines for Solid Wood  
5 Packing Regulations

6  
7 HELD AT: Seattle, Washington

8  
9 DATE: June 23, 2003

10  
11 We, the undersigned, do hereby certify that the  
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